



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 22, 2022

IN THE MATTER OF:

Appeal Board No. 623726

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the monetary benefit determination holding the claimant ineligible to receive benefits, effective October 19, 2020, on the basis that claimant was unable to file a valid original claim pursuant to Labor Law § 527 because he had insufficient earnings required to qualify for

Unemployment Insurance benefits using either the basic or alternate base period. The claimant requested a hearing. The Commissioner of Labor objected that the claimant's request for reconsideration was not made within the time allowed by law.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed May 17, 2022 (), the Judge overruled the Commissioner of Labor's timeliness objection and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained initial determination. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed an original claim for unemployment insurance benefits made effective October 19, 2020, which established a basic base period (BBP) from 3rd quarter 2019 through 2nd quarter 2020 and an alternate base period (ABP) from 4th 2019 through 3rd quarter 2020. By

monetary benefit determination issued February 3, 2021, the Department credited the claimant with earnings from two employers:

3rd Q 2019
4th Q 2019
1st Q 2020
2nd Q 2020
3rd Q 2020
Total
City of New York

0
0
0
0
6008.32

PJ National New York
LLC
0
0
0
619.04

BBP
0
0
0
619.04

619.04
ABP

0
0
619.04
6008.32
6627.36

The Request for Reconsideration, page 2 of the monetary benefit determination,

contains instructions, in part, to provide any missing employer and quarterly wage information, and to include "proof of employment and wages such as pay stubs, W-2s, 1099s, vouchers, checks, tips, bonuses, meals, lodging, commissions, vacation pay and records of employment and/or payment." The claimant submitted the Request for Reconsideration form with the following employer and quarterly wage information:

3rd Q 2019

4th Q 2019

1st Q 2020

2nd Q 2020

3rd Q 2020

Philadelphia Premiere

Caterers

4200.00

0

0

0

0

Keystone PF Bakers Center LLC

0

455.31

0

0

0

City of

New York

0

0

0

0

7500.98

On the Request for Reconsideration form, the claimant provided Wayne PA and Atlanta GA addresses for Philadelphia Premiere Caterers and Keystone PF Bakers Center LLC, respectively. He also advised the Department that he performed work in Pennsylvania for both employers.

The claimant also completed the Request for Alternate Base Period form, page 3 of the Monetary Benefit Determination, with the same employer and earnings

information for Philadelphia Premiere Caterers and Keystone PF Bakers Center LLC. For the City of New York, the claimant indicated earnings of \$6008.32. This form also contains instructions, in part, to include "proof of wages".

Understanding the Enclosed Forms, page 5 of the monetary benefit determination, contains further instructions: "If you disagree with the amount of quarterly earnings or to provide proof that you worked for an employer not listed on the Monetary Benefit Determination, complete and return [these forms]. Include copies of your proof of earnings (pay stub, etc.). If you have no proof of earnings, provide a written explanation to expedite our investigation."

The claimant admitted that he was instructed to complete the forms and "to send [them] with the paystubs so that" the Department could consider the claimed earnings. The record contains five paystubs from the City of New York, which supports the \$6008.32 credited in 3rd quarter 2020. Although the paystubs show additional earnings, they were paid in the 4th quarter 2020 and inapplicable to the claimant's base period. Other than the "four to five" paystubs for the City of New York, he submitted no other paystubs, or other proof of earnings, or a written explanation for the lack thereof, regarding Philadelphia Premiere Caterers and Keystone PF Bakers Center LLC.

The Department of Labor's Wage Reporting Information demonstrates additional income that was not reported on the monetary benefit determination, namely, \$153.21 in 3rd quarter 2020 from Black Veterans for Social Justice Inc. Accounting for this additional employer, the claimant should be credited as follows:

Alternate Base Period (ABP)

Basic Base Period (BBP)

3rd Q 2019

4th Q

2019

1st Q 2020

2nd Q 2020

3rd Q 2020

Total

City of New York

0
0
0
0
6008.32

PJ National New York LLC
0
0
0
619.04

Black Veterans for
Social Justice
Inc.
0
0
0
0
153.21

BBP
0
0
0
619.04

619.04
ABP

0
0
619.04
6161.53
6780.57

OPINION: The credible evidence establishes that the claimant is unable to establish a valid original claim, effective October 19, 2020, for Unemployment Insurance benefits. For the relevant period, a claimant will not satisfy the

requirements of Labor Law § 527 if (1) the claimant did not work and have

earnings in two or more calendar quarters in the base period, (2) the claimant was not paid at least \$2,600.00 in wages in one of the calendar quarters during the base period, and (3) the total base period wages are less than one-and-one-half times the total wages of the high calendar quarter wages in the base period. Here, in the BBP, the claimant had earnings in only one calendar quarter, and in the ABP, the claimant's total base period wages (\$6780.57) were less than one-and-one-half times the total wages of the high calendar quarter wages ($\$6161.53 \times 1.5 = \9242.29). Therefore, the claimant was unable to file a valid original claim effective October 19, 2020.

We disagree with the Judge's exclusion of the earnings from the City of New York based on the definition of "employer" found in Labor Law § 190(3),

namely, that an employer "includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service. The term 'employer' shall not include a governmental agency." This definition is applicable solely to Article 6 of the Labor Law. The Unemployment Insurance Law is governed by Article 18 of the Labor Law, which defines an "employer" to include "the state of New York and other governmental entities". Labor Law § 512. Therefore, the Department

properly included the earnings from the City of New York as covered employment.

We also disagree with the Judge's finding that the claimant earned \$2394.18 in 2nd quarter 2020 from the City of New York. The gross payment of \$2394.18, covering the period July 26 through August 8, 2020, is the same as the year-to-date gross earnings and paid on August 21, 2020. These earnings were incorporated in the year-to-date gross earnings of \$6008.32 reflected in the payment issued on September 18, 2020. As Labor Law § 516 states that wages

earned are deemed paid on the date such payments are made or received, these payments were properly credited to 3rd quarter 2020.

Finally, even if we were to consider the claimed earnings from Philadelphia Premier Catering and Keystone PF Bakers, the claimant would still be unable to file a claim because the total base period wages are less than one-and-one-half times the total wages of the high calendar quarter wages for the BBP ($\$4200.00 \times 1.5 = \6300.00) and the ABP ($\$6161.53 \times 1.5 = \9242.29).

Accordingly, we conclude that the Department properly held that the claimant could not file a valid original claim effective October 19, 2020.

DECISION: The decision of the Administrative Law Judge, insofar as appealed, is affirmed.

The initial monetary benefit determination, holding the claimant ineligible to receive benefits, effective October 19, 2020, on the basis that he was unable to file a valid original claim pursuant to Labor Law § 527 because he had

insufficient earnings required to qualify for Unemployment Insurance benefits using either the basic or alternate base period, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER